

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
APACHE COUNTY, ARIZONA

THIS AGREEMENT is entered into 14 April, 2000,  
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the  
STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the  
"State") and APACHE COUNTY, acting by and through its BOARD OF DIRECTORS (the  
"County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The County is empowered by Arizona Revised Statutes Section 11-251 and 11-931 et seq to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the County.
3. Congress has authorized appropriations for, but not limited to, transportation enhancements including roadside attractions of historic preservation.
4. Such project within the boundary of the County has been selected by the County; the survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

NO. 23942  
Filed with the Secretary of State  
Date Filed: 04/14/00

Robert Taylor  
Secretary of State

3. Nicky D. Greenwald

5 The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the County by reason of federal law and regulations under which funds for the project are authorized to be expended.

6 The County, in order to obtain federal funds for the construction of the project, is willing to provide County funds to match federal funds in the ratio required or as finally fixed and determined by the County and FHWA.

7 The work embraced in this agreement, to be administered by the County, and the estimated costs are as follows: Design and construct Apache Trail System, Crescent Lake – Eagar Town Limits.

**Design TRACS No. SL430 02D**

Estimated Design Cost	\$ 68,929 00
Federal Aid Funds @ 94.3%	\$ 65,000.00
Apache County Funds @ 5.7%	\$ 3,929 00

**Construction TRACS No. SL430 01C**

Estimated Construction Cost (incl. 15% CE cost)	\$461,294.00
Federal Aid Funds @ 94.3%	\$435,000.00
Apache County Funds @ 5.7%	\$ 26,294.00
Total Apache County Funds for Design and Construction	\$ 30,223.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

1 The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the County with the aid and consent of the State and the FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the State, enter into a contract(s) with a firm(s) to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of applicable standards and guidelines. The State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and will request the maximum federal funds available.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the County shall be obligated to incur any expenditure in excess. Such changes require the prior approval of the County.

2. Prior to the solicitation of bids, the County shall set aside sufficient funds in the amount determined to be necessary to match federal funds in the ratio required

3. Upon completion of construction, the County shall ensure appropriate and proper maintenance of the structure, unless assumed by another entity.

4. The County shall allow public access to the structure and grounds during normal business hours, including, but not limited to, tours and announced public meetings.

5 The County will provide personnel to supervise construction. The FHWA will participate in the cost of construction supervision provided by the County at the pro rata established in the Project Agreement for up to 15 percent of the cost of construction. Construction supervision costs not participated in by FHWA shall be borne by the County. All construction project change orders are to be copied to the State.

6 The County will complete the project in accordance with approved plans and specifications and the requirements of the relevant State and federal statutes, rules, or regulations. In the event the County fails to comply with the plans, specifications or any relevant State or federal statutes, rules, or regulations, the County shall hold the State harmless from any claims or costs incurred by the State as a result of the County's failure to comply.

7 State employees may perform any inspections of the project or audit any books or records of the County in order for the State to satisfy itself that the monies on the project have been spent and the project completed in accordance with the plans and specifications, statutes, rules, and regulations of the State and federal government.

### III. MISCELLANEOUS PROVISIONS

1 The State assumes no financial obligation or liability under this agreement. The County assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the County and that the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2 The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA and County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, County agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3 This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another entity.

4 This agreement shall become effective upon filing with the Secretary of State

5 This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511

6 The provisions of Arizona Revised Statutes Section 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit the County will bear all costs associated therewith.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

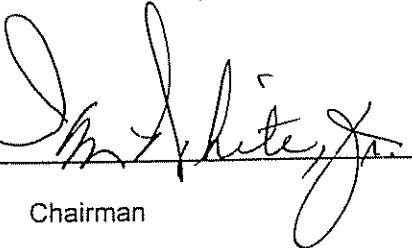
Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue - 616E  
Phoenix, AZ 85007

Apache County  
County Engineer  
P. O. Box 238  
St. Johns, AZ 85936

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.


IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**APACHE COUNTY, ARIZONA**


By   
Chairman

**STATE OF ARIZONA**

Department of Transportation

By   
CATHERINE J. HEGEL  
Contract Administrator

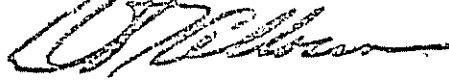
ATTEST:

By   
CLARENCE BIGELOW  
Clerk of the Board

RESOLUTION

BE IT RESOLVED on this 28th day of February 2000, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with Apache County for the purpose of conveying federal funds for the Apache Trail system.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.



---

DAVID R. ALLOCCO, P.E.  
Assistant State Engineer  
Engineering Technical Group  
for Mary E. Peters, Director

ROM M. WHITE, JR.  
CHAIRMAN OF THE BOARD  
P.O. BOX 994 GANADO, AZ 86504

JOE SHIRLEY, JR.  
MEMBER OF THE BOARD  
DISTRICT I  
P.O. BOX 1953 CHINLE, AZ 86503

DAVID A. BROWN  
MEMBER OF THE BOARD  
DISTRICT III  
P.O. BOX 428 ST. JOHNS, AZ 85936

# BOARD OF SUPERVISORS OF APACHE COUNTY

P.O. BOX 428  
ST. JOHNS, ARIZONA 85936

TELEPHONE: (520) 337-4364  
FACSIMILE: (520) 337-2013



CLARENCE A. BIGELOW, MANAGER-CLERK  
ST. JOHNS, AZ 85936

April 5, 2000

Mr. Jack Hammitt  
Arizona Department of Transportation  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, Arizona 85007

Dear Mr. Hammitt:

"Mr. Wengert, County Engineer, presented the request for approval of an Intergovernmental Agreement between Apache County and the Arizona Department of Transportation regarding Apache Trails Phase II. The trail will be from Big Lake to Eagar, Arizona. He explained this is the second phase of the project, using a \$500,000.00 grant.

Mr. Brown moved approval, seconded by Mr. Shirley. Vote unanimous."

I, Clarence A. Bigelow, Clerk of the Board of Supervisors do hereby certify that the above is a true and correct copy of a paragraph of the minutes of a meeting of the Apache County Board of Supervisors' held March 21, 2000.

IN WITNESS WHEREOF, I have affixed the official seal of Apache County at St. Johns, the County Seat, this 5th day of April, 2000.

*Clarence A. Bigelow*

Clarence A. Bigelow  
Clerk/Manager

(SEAL)

APPROVAL OF THE APACHE COUNTY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and APACHE COUNTY and declare this agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona.

DATED this 21 day of March, 2000.

Russell H. Bursley  
County Attorney      Chief Deputy



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ. 85007-2926

JANET NAPOLITANO  
ATTORNEY GENERAL

TRN Main: (602) 542-1680

Direct: (602) 542-8837

Fax: (602) 542-3646

MAIN PHONE : (602) 542-5025

FACSIMILE : (602) 542-4085

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR00-0241TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED April 10, 2000.

JANET NAPOLITANO  
Attorney General

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:et/620942

Enc.